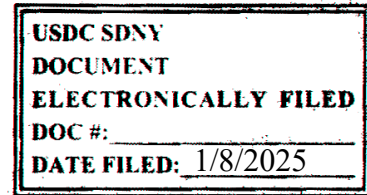


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
RHYS ATHAYDE,

Plaintiff,

22-CV-09547 (SN)

-against-

**ORDER**

DOGPOUND FITNESS, INC., et al.,

Defendants.  
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**SARAH NETBURN, United States Magistrate Judge:**

On January 3, 2025, the parties submitted a Joint Pretrial Order. ECF No. 85. The Court seeks additional briefing on the parties' positions with respect to the application of New York Labor Law.

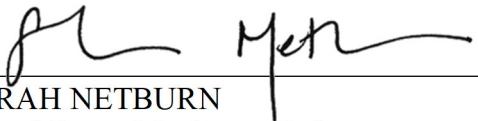
**First**, if the jury determines that Plaintiff was a non-exempt employee during the "salaried periods," how do the parties believe Plaintiff's regular rate of pay should be determined? In particular, the parties should address whether the New York Minimum Wage Order for Miscellaneous Industries and Occupations would apply. See 12 N.Y.C.R.R. § 142-2.16. Alternatively, does either party believe the Fluctuating Work Week method is applicable? See 29 C.F.R. § 778.114(a); Wills v. RadioShack Corp., 981 F. Supp. 2d 245 (S.D.N.Y. 2013). Regardless of methodology (and the parties are free to argue another methodology should apply), the parties should set forth both the legal and factual support for their position.

**Second**, the Defendants make passing reference that the Plaintiff is not entitled to any relief under New York law for work performed outside of New York State. The parties are directed to address the legal and factual support for this argument. Specifically, to the extent

Plaintiff performed some services for the Defendants in or for the Los Angeles gym (or anywhere else outside New York State), what legal authority holds that he would not be covered by New York Labor Law for that work? If New York Labor Law would not apply for that work, state the jurisdictional law that would apply and set forth the parties' positions as to how that law would apply to the facts in this case.

The parties are directed to each file a letter brief addressing these two issues, not longer than five pages, by Friday, January 10, 2025.

**SO ORDERED.**

  
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SARAH NETBURN  
United States Magistrate Judge

DATED: January 8, 2025  
New York, New York